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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/773,504

Filing Date: February 06, 2004

Appellant(s): AANENSON ET AL.

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Michael A. Bondi  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 5-24-10 appealing from the Office action mailed 9-4-09.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 1-4, 6, 8-15, 18-22, 24 and 36-39 are rejected and on appeal.

Claims 5, 7, and 25-35 are allowed.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

#### **(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

#### **(8) Evidence Relied Upon**

6,393,757	Bomann	5-2002
4,799,327	Treon	1-1989
6,647,659	King et al.	11-2003
4,250,650	Fima	2-1981
4,727,674	Garr	3-1988
3,952,445	Liebert	4-1976
4,516,350	Malphrus	5-1985
6,581,319	West	6-2003
4,175,348	Ray	11-1979

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

##### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 12-14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable

over U.S. Patent No. 4,250,650 to Fima in view of U.S. Patent No. 4,799,327 to Treon in view of U.S. Patent No. 4,727,674 to Garr and further in view of U.S. Patent No. 6,393,757 to Bomann.

Referring to claim 1, Fima discloses a lure body – at 20, a jacket – see at 12 and the outer edge of 46 in figures 1-2 where in figure 2 a jacket containing the top dorsal fins is formed on top of the body – at 20, installed over and substantially covering the body made of a light transmissive material – at 44,46, and configured to visually resemble a bait attractive to a sport fish – see for example figures 1-4, the body including a housing with sidewalls made of a generally light-transmissive material – see at the interior of 20 and – at 44 and 46, and an interior space for accommodation of display lights – at 28,40, a first light source – at 38, installed in the housing parallel to an intended direction of travel of the lure through a body of water – see for example figures 1-4, and viewable through the sidewalls of the housing, a display light source – at 40, installed in the housing aft of the first linear light source and including an aft facing light source – at 40, a fiber optic bundle – at 48, having a first end connected inside the housing next to the aft light source – at 40 as seen in figures 3-4, so as to receive light from the aft light source, and a second end extending aft out of the housing to transmit light from the aft light source – see for example figures 1-4, a battery pack – at 50, installed in the housing and connected to the light sources – see for example figures 3-4, and an on/off switch – at 28-34, connected between the display lights and the battery pack to turn the display lights on and off – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23. Fima does not disclose the first light source is a linear bank of lights. Treon does disclose the first light source – see the sidewalls of the lure in figure 1, is a linear bank of lights – see for example figure 1.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the linear bank of lights of Treon, so as to allow for the light to be made more uniform along the length of the lure. Fima further does not disclose a circular bank of display lights installed in the housing aft of the first light sources. Garr does disclose a circular bank of display lights – at 3, in the housing – at 2, aft of the first lights – at 3 as seen in figures 1-2.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the circular bank of display lights of Garr, so as to allow for the lure to be more attractive to fish. Fima further does not disclose the jacket is removable and interchangeable. Bomann does disclose the jacket – at 32, made of light transmissive sidewalls – see column 8 lines 49-63, that is removable and interchangeable and shaped as a bait – see figures 2-4.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the interchangeable jacket of Bomann, so as to allow for the user to selectively determine the color and shape of the device.

Referring to claim 2, Fima as modified by Treon, Garr and Bomann further discloses a second linear bank of lights parallel to the first bank – see for example figure 1 and column 4 lines 18-24 of Treon.

Referring to claims 3 and 12, Fima as modified by Treon, Garr and Bomann further discloses at least one flasher module – at 28-50, connected to the lights operative to flash the lights on and off for the purpose of attracting fish – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima.

Referring to claims 4 and 13, Fima as modified by Treon, Garr and Bomann further discloses the flasher module is operative to sequentially flash lights of the light banks – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima.

Referring to claim 6, Fima as modified by Treon, Garr and Bomann further discloses the lights are light emitting diodes – see for example column 2 lines 40-51 of Fima and columns 3-4 of Garr.

Referring to claim 14, Fima as modified by Treon, Garr and Bomann further disclose the flasher module – at 28-50, is connected to the first light – at 38, to sequentially flash the light – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima, and including a second flasher module – at the other end of 28-50, connected to the aft light – at 40, operative to sequentially flash the aft light – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima.

Referring to claims 24, Fima discloses a lure body – at 20, a jacket – see at 12 and/or 46 in figures 1-2, installed on and substantially covering the body made of a translucent material and configured to visually resemble a bait attractive to a sport fish – see for example figures 1-4, the body including a housing with sidewalls – at the interior of 20 and/or 44 and 46, and an interior space for accommodation of display lights – at 28,40, a first light – at 38, installed in the housing parallel to an intended direction of travel of the lure through a body of water – see for example figures 1-4, and viewable through the sidewalls of the housing, a display light – at 40, installed in the housing aft of the first linear bank of lights and including an aft facing light – at 40, a fiber optic bundle – at 48, having a first end connected inside the housing next to the aft light – at 40 as seen in figures 3-4, so as to receive light from the aft light, and a second end

extending aft out of the housing to transmit light from the aft light – see for example figures 1-4, a battery pack – at 50, installed in the housing and connected to the lights – see for example figures 3-4, and an on/off switch – at 28-34, connected between the display lights and the battery pack to turn the display lights on and off – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23. Fima further discloses at least one flasher module – at 28-50, connected to the lights operative to flash the lights on and off for the purpose of attracting fish – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23. Fima does not disclose the first light is a first and second linear bank of lights. Treon does disclose the first light – see the sidewalls of the lure in figure 1, is a first and second linear bank of lights – see for example figure 1 and column 4 lines 18-24. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the linear bank of lights of Treon, so as to allow for the light to be made more uniform along the length of the lure. Fima further does not disclose a circular bank of display light installed in the housing aft of the first lights. Garr does disclose a circular bank of display lights – at 3, in the housing – at 2, aft of the first lights – at 3 as seen in figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the circular bank of display lights of Garr, so as to allow for the lure to be more attractive to fish. Fima further does not disclose the jacket is removable and interchangeable. Bomann does disclose the jacket – at 32, made of light transmissive sidewalls – see column 8 lines 49-63, that is removable and interchangeable and shaped as a bait – see figures 2-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the interchangeable jacket of Bomann, so as to allow for the user to selectively determine the color and shape of the device.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by Treon, Garr and Bomann as applied to claim 4 above, and further in view of U.S. Patent No. 3,952,445 to Liebert. Fima as modified by Treon and Garr does not disclose a clear epoxy resin filling the interior space of the housing and encapsulating the items therein. Liebert does disclose a clear epoxy resin – at 10, filling the interior space of the housing – at 17 or 19, and encapsulating the items therein – see for example figures 3 and 5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by Treon, Garr and Bomann and add the clear epoxy resin device of Liebert, so as to allow for the device to be more lifelike.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by Treon, Garr and Bomann as applied to claim 4 above, and further in view of U.S. Patent No. 4,175,348 to Ray. Fima as modified by Treon, Garr and Bomann does not disclose the on/off switch is a magnetically actuated reed switch operable through the use of a magnet held exteriorly to the housing. Ray does disclose the on/off switch is a magnetically actuated reed switch – at 30, operable through the use of a magnet – at 34,36, held exteriorly to the housing – at 32 – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by Treon, Garr and Bomann and add the reed switch of Ray, so as to allow for the device to have intermittent operation of the lights.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by Treon, Garr and Bomann as applied to claim 4 above, and further in view of U.S. Patent No. 4,516,350 to Malphrus. Fima as modified by Treon, Garr and Bomann does not disclose the jacket is configured in the likeness of a squid. Malphrus does disclose the jacket – at 10-14, is

configured in the likeness of a squid – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by Treon, Garr and Bomann and add the jacket in the likeness of a squid of Malphrus, so as to allow for the lure to be more attractive to fish.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by Treon, Garr and Bomann as applied to claim 4 above, and further in view of U.S. Patent No. 6,581,319 to West. Fima as modified by Treon, Garr and Bomann does not disclose the battery pack includes a plurality of rechargeable batteries and a recharging circuit connected to the batteries and a recharging receptacle installed in the housing sidewalls. West does disclose the battery pack – at 26, includes a plurality of rechargeable batteries – see for example figures 1-2 and column 3 lines 48-60, and a recharging circuit connected to the batteries – see for example at 22-38 in figure 2, and a recharging receptacle installed in the housing sidewalls – see for example at 12-18 in figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by Treon, Garr and Bomann and add the rechargeable batteries of West, so as to allow for the device to be reusable for a long period of time.

Claims 15 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fima in view of Garr and Bomann.

Referring to claim 15, Fima discloses a lure body – at 20, a jacket – see at 12 and 46 in figures 1-2, installed over and substantially covering the body made of a light transmissive material and configured to visually resemble a bait attractive to a sport fish – see for example figures 1-4, the body including a housing with sidewalls – at the interior of 20 or at 44 and 46 made of generally light transmissive, and an interior space for accommodation of display lights –

at 28,40, a first light – at 38, installed in the housing parallel to an intended direction of travel of the lure through a body of water – see for example figures 1-4, and viewable through the sidewalls of the housing, a display light – at 40, installed in the housing aft of the first linear bank of lights and including an aft facing light – at 40, a fiber optic bundle – at 48, having a first end connected inside the housing next to the aft light – at 40 as seen in figures 3-4, so as to receive light from the aft light, and a second end extending aft out of the housing to transmit light from the aft light – see for example figures 1-4, a battery pack – at 50, installed in the housing and connected to the lights – see for example figures 3-4, and an on/off switch – at 28-34, connected between the display lights and the battery pack to turn the display lights on and off – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23. Fima does not disclose a circular bank of display light installed in the housing aft of the first lights. Garr does disclose a circular bank of display lights – at 3, in the housing – at 2, aft of the first lights – at 3 as seen in figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the circular bank of display lights of Garr, so as to allow for the lure to be more attractive to fish. Fima as modified by Garr further discloses at least one electronic flasher module – at 28-50, connected to the lights operative to flash the lights on and off for the purpose of attracting fish – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima. Fima as modified by Garr further discloses the flasher module is operative to sequentially flash lights of the light banks – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima. Fima further does not disclose the jacket is removable and interchangeable. Bomann does disclose the jacket – at 32, made of light transmissive sidewalls – see column 8 lines 49-63, that is removable and interchangeable and

shaped as a bait – see figures 2-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the interchangeable jacket of Bomann, so as to allow for the user to selectively determine the color and shape of the device.

Referring to claim 18, Fima as modified by Garr and Bomann further discloses the lights are light emitting diodes – see for example column 2 lines 40-51 of Fima and columns 3-4 of Garr.

Referring to claim 19, Fima as modified by Garr and Bomann further discloses the lights are green – see for example column 4 lines 55-62 of Garr.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by Garr and Bomann as applied to claim 19 above, and further in view of U.S. Patent No. 3,952,445 to Liebert. Fima as modified by Garr and Bomann does not disclose a clear epoxy resin filling the interior space of the housing and encapsulating the items therein. Liebert does disclose a clear epoxy resin – at 10, filling the interior space of the housing – at 17 or 19, and encapsulating the items therein – see for example figures 3 and 5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by Garr and Bomann and add the clear epoxy resin device of Liebert, so as to allow for the device to be more lifelike.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by Garr and Bomann as applied to claim 20 above, and further in view of U.S. Patent No. 4,175,348 to Ray. Fima as modified by Garr and Bomann does not disclose the on/off switch is a magnetically actuated reed switch operable through the use of a magnet held exteriorly to the housing. Ray does disclose the on/off switch is a magnetically actuated reed switch – at 30,

operable through the use of a magnet – at 34,36, held exteriorly to the housing – at 32 – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by Garr and Bomann and add the reed switch of Ray, so as to allow for the device to have intermittent operation of the lights.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by Garr, Bomann and Liebert as applied to claim 20 above, and further in view of U.S. Patent No. 4,516,350 to Malphrus. Fima as modified by Garr, Bomann and Liebert does not disclose the jacket is configured in the likeness of a squid. Malphrus does disclose the jacket – at 10-14, is configured in the likeness of a squid – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by Garr, Bomann and Liebert and add the jacket in the likeness of a squid of Malphrus, so as to allow for the lure to be more attractive to fish.

Claims 36-37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fima in view of U.S. Patent No. 6,647,659 to King et al.

Referring to claim 36, Fima discloses a deep sea lure comprising, a lure body – at 10, surrounding a housing – proximate 38,44, comprised of light transmissive sidewalls and an interior space – see figures 1-4, at least one bank of multiple spaced apart individual electric display lights – at 38,40, – see figures 3-4, in the interior space viewable through the light transmissive sidewalls of the housing – see at 46 and proximate 48 in figures 3-4, a fiber optic bundle – at 48, to transmit light aft from the display lights to outside the lure – see figures 1-4. Fima does not disclose a rechargeable battery pack for the display lights installed in the housing and a leader tube, passing centrally through the body to the battery pack, that forms part of

recharging circuit. King et al. discloses a rechargeable battery pack – at 21, for the display light – at 29, installed in the housing – see figure 3, and a leader tube – at 35, passing centrally through the body to the battery pack – see figure 3, that forms part of recharging circuit – see figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima and add the rechargeable battery pack of King et al., so as to allow for the device to have a longer useful life.

Referring to claim 37, Fima as modified by King et al. further discloses an on/off switch – at 28-34, connected between the display lights and the battery pack to turn the display lights on and off – see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima.

Referring to claim 39, Fima as modified by King et al. further discloses the lights are light emitting diodes – see for example column 2 lines 40-51 of Fima.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fima as modified by King et al. as applied to claim 37 above, and further in view of U.S. Patent No. 4,175,348 to Ray. Fima as modified by King et al. does not disclose the on/off switch is a magnetically actuated reed switch operable through the use of a magnet held exteriorly to the housing. Ray does disclose the on/off switch is a magnetically actuated reed switch – at 30, operable through the use of a magnet – at 34,36, held exteriorly to the housing – at 32 – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Fima as modified by King et al. and add the reed switch of Ray, so as to allow for the device to have intermittent operation of the lights.

### **(10) Response to Argument**

Regarding the prior art rejections of claims 1-4, 6, 12-14 and 24, the Fima reference US 4250650 discloses the lure body - at 20,46, has light transmissive sidewalls - at 46 in that these items 46 are made light transmissive to allow light from the light – at 38 to pass through via fiber optics – at 44 as seen in figure 3. Appellant has not claimed the entire sidewall of the lure body is made light transmissive. Further, the Treon reference US 4799327 discloses a linear bank of lights - at b,c, that are light sources in that items b,c are where the light is transmitted to outside the lure body and therefore are the source of light that exits the body of the fishing lure. Further, the Fima reference discloses the rearward light - at 40 faces in the aft/rearward direction as seen in figures 3-4. The Garr reference US 4727674 discloses a circular bank of lights - the rearmost group of lights - at 3 as seen in figures 1-3, these lights disposed behind another bank of lights - the forward group of lights - at 3 with portions of the light from the rear lights - at 3 being shined in the rear direction in that portions of the lights - at 3 face/are directed toward the rear of the lure body as seen in figures 1-3. The Fima reference discloses multiple light sources - at 38,40 and using different types of light sources such as that of Treon and Garr would have been obvious to provide the desired light effects that would be attractive to fish.

Regarding claim 8, the Liebert reference US 3952445 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 1, therefore see the response to these arguments above.

Regarding claim 9, the Ray reference US 4175348 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 1, therefore see the response to these arguments above.

Regarding claim 10, the Malphrus reference US 4516350 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 1, therefore see the response to these arguments above.

Regarding claim 11, the West reference US 6581319 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 1, therefore see the response to these arguments above.

Regarding claims 15 and 18-19, the Fima reference further discloses the additional claim limitations of the electronic flasher module being provided by movement of the battery within the lure body - see for example figures 3-4 and column 2 lines 62-68 and column 3 lines 1-23 of Fima, wherein when the battery - at 50 is in contact with the contacts at 32 on each side of the cavity in which the battery moves the lights - at 38,40 are turned on and when the battery is not in contact with the contacts on each side of the cavity the lights are turned off. This is facilitated by the concave tip on the battery seen in figures 2-3 of Fima where this tip goes into and out of contact with its associated contacts - at 32 as seen in figure 3 therefore alternating the power to the lights - at 38,40, therefore allowing for the lights to be turned on and alternatively turned off repeatedly as the battery moves through the cavity in the lure body to provide a flashing effect which sequentially flashes the lights.

Regarding claim 20, the Liebert reference US 3952445 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 15, therefore see the response to these arguments above.

Regarding claim 21, the Ray reference US 4175348 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 15, therefore see the response to these arguments above.

Regarding claim 22, the Malphrus reference US 4516350 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 15, therefore see the response to these arguments above.

Regarding claims 36-37 and 39, the King et al. reference US 6647659 discloses a tube – at 35, located in a center portion of the lure body – see figure 3 used in a recharging circuit --see figure 3 where item 35 is part of the circuit and - see figures 10-11 which show the recharging of the rechargeable batteries – at 21. Appellant does not claim the leader tube is in a perfect center of the lure and it is deemed that the tube - at 35 of King et al. is in a central portion of the lure in that it is not located at an end of the lure body as seen in figure 3. Further, the leader wire in claim 36 is not positively recited in the claim and appellant argues that the King et al. reference does not disclose a leader tube through which a leader wire extends but these limitations are not found in the claims.

Regarding claim 38, the Ray reference US 4175348 discloses the claim limitations of this claim as detailed above in section (9) of this office action. Appellant relies upon the same arguments as to parent claim 36, therefore see the response to these arguments above.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

David Parsley

/David J Parsley/

Primary Examiner, Art Unit 3643

Conferees:

Robert Swiatek /RPS/

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TQAS TC 3600